

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

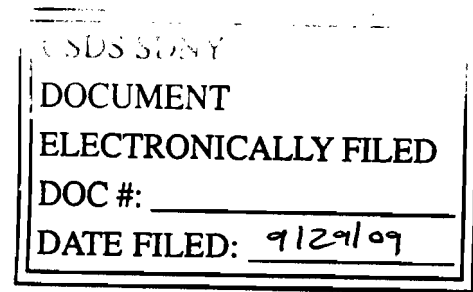
JOSE FERNANDEZ,

Petitioner,

-v-

DALE ARTUS, Superintendent, Clinton
Correctional Facility,

Respondent.



No. 07 Civ. 2532 (RJS) (AJP)
ORDER

RICHARD J. SULLIVAN, District Judge:

Before the Court is the Report and Recommendation (“Report”) of the Honorable Andrew J. Peck, Magistrate Judge, in connection with the above captioned Petition for a writ of habeas corpus. For the reasons set forth below, the Court adopts the Report in its entirety.

Jose Fernandez (“Petitioner”) commenced this action on a *pro se* basis on March 27, 2007, seeking a writ of habeas corpus relating to his April 28, 2004 conviction in the New York State Supreme Court, Bronx County, for second degree murder. Petitioner was sentenced to twenty five years to life imprisonment. In this matter, Petitioner simply raises the same claim that he raised on direct appeal: that the trial court erred by admitting fingerprints because the fingerprint evidence was “entirely irrelevant to the question of [Petitioner’s] guilt and [that] its admission greatly prejudiced [Petitioner]” and “served only to improperly bolster the identification of Petitioner.” (Pet.’s Br. at 13-14).

On January 12, 2009, the case was referred to Magistrate Judge Peck and on June 8, 2009, Magistrate Judge Peck issued the Report, recommending that Petitioner’s application for a writ of habeas corpus be denied. (Report at 1). With respect to Petitioner’s argument that the fingerprints

were irrelevant to the question of Petitioner's guilt and that its admission greatly prejudiced Petitioner, Magistrate Judge Peck found that, because Petitioner's claim was not presented in federal terms to the New York Court of Appeals, it should be denied as unexhausted but deemed exhausted and procedurally barred. (Report at 25-33). Magistrate Judge Peck likewise concluded that Petitioner's bolstering claim was not cognizable on habeas review. Based on those findings, Magistrate Judge Peck recommended that the Court deny the Petition and not issue a certificate of appealability. Pursuant to Rule 72(b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1), the parties were given ten (10) days to file written objections to the Report. As of the date of this Order, Petitioner has failed to file objections to any portion of Magistrate Judge Peck's Report.


In reviewing a report and recommendation from a magistrate judge, the Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "'To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record.'" *Cuadrado v. New York City Dep't of Correction*, No. 08 Civ. 3026 (PAC) (THK), 2009 WL 1033268, at *1 (S.D.N.Y. Apr. 16, 2009) (quoting *Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y.2003)); *see also Williams v. Senkowski*, No. 97 Civ. 3887 (DLC), 1999 WL 1192296, at *1 (S.D.N.Y. Dec. 13, 1999).

After a careful review of the record and Magistrate Judge Peck's well-reasoned Report, the Court finds no clear error and adopts the Report in its entirety. For the reasons set forth therein, Petitioner's application for a writ of habeas corpus is DENIED. In addition, because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability

will not issue. *See* 28 U.S.C. § 2253; *Love v. McCray*, 43 F.3d 192, 195 (2d Cir. 2005). The Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: September 28, 2009
New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE